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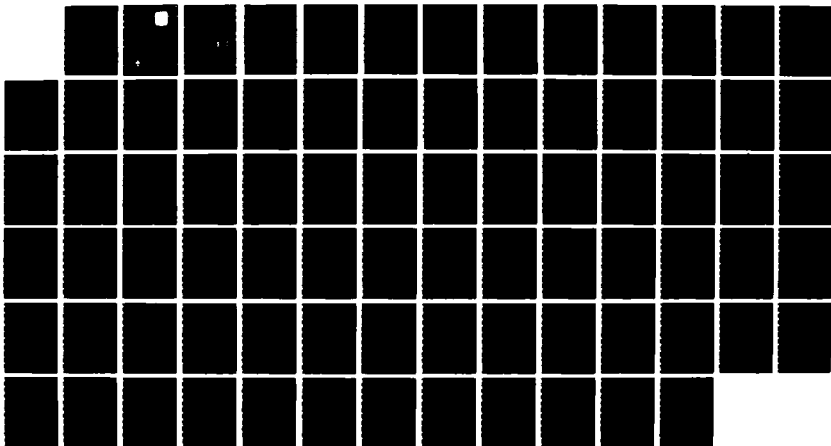
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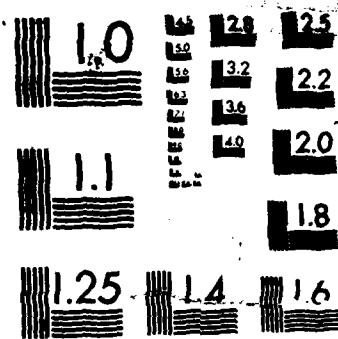
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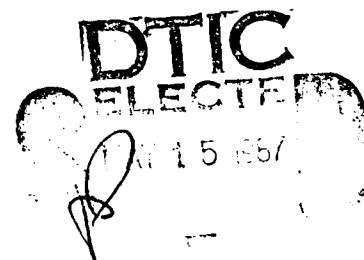
LEGAL SERVICES DURING WAR

BY

COLONEL THEODORE B. BOREK

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commissions, war crimes investigations, civil affairs advice, military government rules, international law issues, prisoner of war problems, legal assistance, claims investigation, and disposition of property concerns. The conclusion reached is that to be prepared to provide adequate legal services in any future conflict, significant changes must be made in Judge Advocate training and doctrine.

**USAWC MILITARY STUDIES PROGRAM PAPER**

**LEGAL SERVICES DURING WAR**

**AN INDIVIDUAL STUDY PROJECT**

by

**Colonel Theodore B. Borek, JA (Author)**

**Colonel William Eckhardt, JA  
Project Advisor**

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**US Army War College  
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## ABSTRACT

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This study project describes legal services during World War II and Urgent Fury, gives guidance on planning for legal services during future conflicts, and makes suggestions to improve the Army's readiness to transition from peace to war. In addition to identifying substantive legal issues unique to combat, the paper discusses operational matters which must be considered by Commanders and Judge Advocates responsible for legal services in times of conflict. Topics discussed include: military justice procedures, military commissions, war crimes investigations, civil affairs advice, military government rules, international law issues, prisoner of war problems, legal assistance, claims investigation, and disposition of property concerns. The conclusion reached is that to be prepared to provide adequate legal services in any future conflict, significant changes must be made in Judge Advocate training and doctrine.

## PREFACE

I would like to acknowledge the especially helpful research assistance provided by Mr. Dan Lavering, The Judge Advocate General's School, Army; William H. Parks, COL., USMC-R, Office of The Judge Advocate General, Department of the Army; and Ms. Hannah Zeidlik, US Army Center for Military History. Also, I would like to thank my faculty advisor, Colonel William G. Eckhardt, for his expert guidance and personal encouragement throughout my preparation of this study project.

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## CHAPTER 1

### INTRODUCTION

"We learn from history that  
we do not learn from history."

This paper examines legal services during war. Its purpose is to help staff judge advocates and commanders plan and train for the deployment and use of legal assets during periods of conflict. The paper concludes that to be prepared to provide adequate legal services in any future conflict, significant changes must be made in Judge Advocate training and doctrine.

I decided that a historical examination of problems and issues confronting staff judges advocates during war was worth study for several reasons. First, as the Staff Judge Advocate of a division in Germany from 1984 to 1986, I confronted potential war deployment problems with little information about how similar problems had been resolved in the past. I knew that deployment plans varied markedly amongst division judge advocate offices in Germany, some divisions centralizing judge advocate assets in the Rear and others dispersing them with the brigades, but these deployment schemes were based largely on peacetime geographical boundaries. Where were legal assets positioned in past conflicts? Similarly, there was debate about whether courts-martial cases would be tried during early stages of any conflict. How soon after beginning past combat operations did trials begin? Second, I believed that staff judge advocates should be familiar with substantive issues

confronted in past conflicts to anticipate future needs, especially for purposes of training. Wartime issues are likely to vary from peacetime issues, but how? After action studies from World War II suggested that "enough prior study had not been given to many of the topics" Army lawyers addressed.<sup>1</sup> Is such criticism still valid? Finally, there have been differences amongst senior judge advocates about general deployment doctrine.<sup>2</sup> Should legal offices be deployed with divisions in combat, or would the command be served better with lawyers assigned to echelons above the division?<sup>3</sup> While recent operational concepts conclude that legal services should be provided as far forward as feasible, sometimes even with brigade-sized units, historical experience is not cited to exemplify the types of services to be provided at different levels.<sup>4</sup> Might historical examples guide this doctrine?

Using a historical approach, this paper attempts to answer these questions and identify the topics that must be considered by Army lawyers and commanders if quality legal services are to be provided in future conflicts. Procedurally, I had hoped to review documents about Judge Advocate services in World War II, Vietnam, Korea, and Grenada. Unfortunately, I found a dearth of material about the Korean conflict,<sup>5</sup> and many of the historical reports from Vietnam are still classified. Consequently, this study focuses on judge advocate services in the European Theater of Operations during World War II and on the Grenada operation. Regarding World War II, notable emphasis is placed on Judge Advocate Studies from the Report of

the General Board, US Forces, European Theater, and on after action reports of the US 12th Army Group and the First, Third, and Fifteenth Armies. For Grenada, most information comes from personal interviews of participants and from after action reports of the 82nd Airborne Division, the XVIII Airborne Corps, and the United States Army Claims Service.

## CHAPTER 2

### EUROPEAN THEATER, WORLD WAR II

#### Overview

In preparation for the Normandy invasion on 6 June 1944, US Army personnel arrived in the British Isles much earlier. In March 1942 a Staff Judge Advocate was designated for Headquarters, United States Army Forces in the British Isles, and in the early summer of 1942 the European Theater of Operations, United States Army (ETOUSA), began to function in London.<sup>6</sup> To support the theater, a branch office of The Judge Advocate General and a Board of Review were established in May and became operational by July 1942.<sup>7</sup> In the Spring of 1944, as the invasion drew near, a forward echelon of Services and Supply was established with a Judge Advocate Section.<sup>8</sup>

Many units with judge advocates participated in the invasion and supported operations thereafter. The principal US ground forces in the European Theater were two army groups and five field Armies, with an average of from two to four corps per Army and two or more divisions per corps.<sup>9</sup> Each of these units had judge advocate officers. In addition, base section offices with judge advocates were located throughout liberated territory. By the end of the war roughly 485 judge advocates supported 118 general courts-martial jurisdictions, usually units of division size or larger.<sup>10</sup>

Recalling the operational setting will facilitate understanding of judge advocate services. While it took allied units about six weeks after landing at Normandy in June to

establish a front line about twenty miles from the coast, by 31 August 1944 elements of General Patton's Third Army crossed the Meuse River at Verdun, about 300 miles to the east.<sup>11</sup> The Allied front line continued eastward, and by mid-December, when the Germans launched their counteroffensive in the Ardennes, the Allied Armies had liberated France and reached the German border. After the Allies contained the German offensive, they moved eastward again. In early March 1945 Patton's Third Army raced 60 miles in three days to reach the Rhine River near Coblenz.<sup>12</sup> The First and Ninth Armies reached the Rhine to the north of the Third Army about the same time. When the War officially ended on 8 May 1945, Allied Forces had travelled as far as the Elbe River, about 500 miles east of Normandy. The Allied front line extended into Czechoslovakia and Austria as well.

Judge Advocate offices moved many times in support of combat operations. For example, General Patton's SJA believed that his office moved seventeen times while going through France.<sup>13</sup> The Judge Advocate Section generally followed with the rear and operated from tents. Trials sometimes were held in the open air.<sup>14</sup>

#### Judge Advocate Organization

Compared with today, there were a number of differences in judge advocate offices of World War II that should be recalled. For example, there was no requirement for a lawyer to represent an accused even in general courts-martial. The Article of War

provided only for the detail of an officer of the Judge Advocate General's Department as a member of a general courts-martial if reasonably available.<sup>15</sup> The lack of a requirement for lawyers to be trial and defense counsel perhaps was the reason for having so few judge advocates authorized for combat units. For example, the authorized judge advocate section strength for an Infantry Division totaled five: two officers (a lieutenant colonel and captain), one warrant officer, and two enlisted members.<sup>16</sup> One less officer was authorized for an Armored Division. A corps judge advocate office totaled five also: two officers (a colonel and lieutenant colonel), and three enlisted, including a stenographer and clerk typists. An Army's office totaled 13: six officers, one warrant officer, and six enlisted. An Army Group had nine: four officers, one warrant officer, and four enlisted.

In addition to division, corps, and army headquarters, judge advocates supported base sections which were established in Britain and on the continent. For example, five base sections were established in Britain well before the invasion. The Advanced Base Section moved to the continent on 16 June 1944,<sup>17</sup> only ten days after D Day. The Normandy Base Section and Brittany Base Section were established in August. Other base sections moved from Britain to the continent to establish the Paris and Channel Base Sections. Generally, base sections were given general courts-martial authority, and so in addition to providing many other legal services, one of the primary



functions of base section judge advocates was to process courts-martial.<sup>18</sup>

Despite the comparatively few authorizations for judge advocate officers, the functions given lawyers expanded not only for military justice but for other services as well. A monthly report of the SJA, Third US Army, typifies work normally done: try cases; prepare procedural guides; review courts-martial records and pretrial documents; advise on military affairs, rules of land warfare, and military government questions; advise summary court officers; prepare letters of reprimand and admonishments; prepare military justice circulars; distribute Law of Land Warfare pamphlets; investigate Law of War violations; review legal sufficiency of numerous documents pertaining, e.g., to currency exchange and prisoners of war; investigate automobile accidents; and furnish legal assistance.<sup>19</sup> Accordingly, law office strengths were augmented both with non-Judge Advocate General Department (JAGD) lawyers and with personnel assigned directly to JAGD. To illustrate the growth of assigned lawyers, the tentative strengths of the First Army Group, which was redesignated 12th Army Group in August 1944, rose from an original three officers, one warrant officer, and four enlisted men in November 1943 to 47 officers and 78 enlisted.<sup>20</sup> Similarly, strengths of other judge advocate sections increased to deal with the many legal issues confronted.

### Military Justice Issues

The need for judge advocate support in the forward echelons of the invasion quickly became apparent. For example, in the First US Army within 30 days of arrival in France 35 courts-martial charges had been preferred and examined by judge advocates.<sup>21</sup> Ultimately, from 18 July 1942 until 1 May 1945, which included the period spent in Great Britain, 12,120 general courts-martial cases were reported in the European Theater of Operations.<sup>22</sup> Over 1000 of these were officer cases. In addition, about 32,360 special courts-martial and about 64,420 summary courts-martial were conducted. The most frequent offenses tried by general courts-martial included: 3,857 for absence without leave; 1,963 desertion convictions; 1,608 assault cases; 1,424 disobedience cases; 1,191 larceny cases; 935 sentinel cases; 494 misbehavior before the enemy cases; 305 involuntary manslaughter cases; 290 murder cases; 169 rape cases; and 87 statutory rape cases.<sup>23</sup>

While no attempt will be made to address all the problems associated with military justice actions in the European Theater, identification of several issues unique to combat situations will be discussed.

Cases Pending on Deployment. Immediately before D Day many combat organizations had charges pending that were impractical to try. Equipment often was packed away, and officers were needed for other urgent duties. Pending cases,

therefore, often were transferred to base section jurisdictions remaining in Britain. The Western Base Section, for example, tried 63 cases within 45 days of D Day.<sup>24</sup>

Concurrent Jurisdiction of Base Sections. In addition to transfers to base sections in Britain, with the rapid movement of combat organizations through France, combat commanders frequently transferred cases to established base sections on the continent. This procedure was particularly useful in disposing of offenses involving civilian witnesses.<sup>25</sup> Transferring cases had one severe disadvantage, however. Because of rapid movement and overburdened communications, it frequently was not possible to obtain records of an accused to be used during sentencing.

Another issue with regard to base section jurisdiction caused consternation amongst some commanders and judge advocates. Beginning in December 1944 it became a European Theater policy that base section commanders could exercise courts-martial jurisdiction over military personnel committing offenses within the base section geographical limits.<sup>26</sup> This often included personnel under the jurisdiction of another commander. While transfer of cases between convening authorities generally was recognized as necessary for efficient administration of justice, concurrent jurisdiction, which balanced the discipline needs of the geographic commander with that of the command line commander, caused concern. Sometimes this dilemma was resolved by limiting the unilateral jurisdiction of the geographic commander to nonjudicial

punishment limits.<sup>27</sup> In other cases, exercise of summary courts-martial jurisdiction without the consent of the accused's commander occurred. This was true especially for minor offenses. In Paris, for example, for traffic offenses the base section commander imposed 70 to 100 summary court trials daily, using the authority of the European Theater policy.<sup>28</sup> To provide swift discipline, these "police courts" or "on-the-spot" summary courts became widely used.

Desertion. Desertion is a capital offense during war, and in World War II the death sentence was imposed for desertion in 139 cases. That sentence was executed only once, in U.S. v. Slovik.<sup>29</sup> Nevertheless, two issues concerning this offense are worthy of note. First, before embarking for Normandy judge advocates developed a procedure for warning unit members of impending movement and contemplated hazardous operations.<sup>30</sup> This was necessary to perfect evidence for trial. Second, use of the desertion offense was criticized by senior judge advocates as frequently overcharged. Often the facts made out only absence without leave.<sup>31</sup>

Speedy Trial. Even during combat operations, there was heavy emphasis on speedy trial. In fact, expeditious processing may be even more important in combat situations where witnesses may become battle casualties and where movement of units could make trials impossible if not expedited. In the European Theater a goal of 30 days to sentence and 45 days to action was set and attained by many jurisdictions; the overall average, however, was 38 days to sentence and 60 days to

action.<sup>32</sup> While excessive emphasis on speedy processing was criticized by some judge advocates who favored more attention to proper investigation, securing evidence, and the rights of an accused,<sup>33</sup> these World War II goals illustrate the constant attention given to speedy processing of courts-martial.

Location of Judge Advocate Sections and Trials. As discussed earlier, base section jurisdictions afforded combat commanders the options of transferring accused soldiers to geographically convenient trial locations. Still, trials occurred in combat units, and judge advocate sections had to be positioned not only to support trials but also to provide other legal services. Two observations offer general guidance on placement of judge advocate assets. The staff judge advocate section should accompany the forward echelon of any major deployment.<sup>34</sup> This was verified by the volume of cases occurring shortly after landing in France. Subsequently, during combat the judge advocate section can operate from a rear echelon, but that location should be near enough to the front line units to permit communications pertaining to military justice matters.<sup>35</sup> In the European Theater, the distance between the rear and forward echelons often was 10 to 15 miles.<sup>36</sup> Problems arose when the SJA in the rear echelon was so far behind the units that commanders had to make long trips to the rear in connection with legal activities, as happened in Patton's Third US Army, for example.<sup>37</sup> In both the First and Fifteenth Armies, it appeared favorable to hold trials in rear areas, where standing court members could be

appointed, rather than in forward field locations.<sup>38</sup> On occasion, however, judge advocates would bring counsel and the accused to a forward area for trial, perhaps for convenience of witnesses and court members. As the situation and the desires of the commander may vary, the Report of the General Board suggested it desirable to prescribe no rigid rule on placement of the Judge Advocate Section.<sup>39</sup>

Psychiatric Evaluations. For combat offenses, such as desertion and misbehavior before the enemy, it became the policy of the First US Army to have an accused examined by a psychiatrist.<sup>40</sup> The First US Army Exhaustion Center was established and operated under the supervision of the Army Group Surgeon. While in most commands psychiatric examinations were made only if the nature of the case or history of the accused suggested it,<sup>41</sup> 12th Army Group extended the policy of requiring psychiatric exams for combat offenses to organizations of the Third, Ninth, and Fifteenth US Armies.<sup>42</sup> In addition, in Fifteenth US Army every individual tried by general courts-martial was given a psychiatric examination.<sup>43</sup>

Classification of Charge Sheets and Records of Trial. A concern normally not contemplated for trials in peacetime which could be a serious concern during war is the security classification of trial documents. European Theater Standard Operation Procedures for Military Justice required classification of charger sheets containing both the geographic location of the station and the organization of the accused.<sup>44</sup> Similarly, classification of portions of records of

trial were required.<sup>45</sup> Classification of document caused development of systems to secure classified documents and to expurgate ungermane classified information from records of trial distributed to the accused.

Investigations. Investigation of offenses generally was conducted informally by an officer from the accused's unit, and in more serious cases the Criminal Investigation Department (CID) was used.<sup>46</sup> The perennial complaint by judge advocates was that investigations were completed and forwarded to commanders too slowly. One particularly successful SJA improved speedy processing of cases by giving the CID a desk in the judge advocate's office.<sup>47</sup> A number of judge advocates believed that CID teams should be operated under the supervision of the SJA.<sup>48</sup>

Confinement Policies. Due to the circumstances of war and facilities available, several general policies existed in the European Theater relevant to confinement. Notably, confinement was to be avoided unless necessary.<sup>49</sup> This policy applied not only to convicted prisoners but also to those awaiting trial. Limited confinement facilities were available, and responsibility for an accused rested with the unit commander who usually had no facility for confinement.<sup>50</sup> Commanders were directed to suspend confinement in all but extreme cases.<sup>51</sup>

It was also a policy that offenders should not avoid combat.<sup>52</sup> This policy apparently existed to dissuade servicemen from committing petty offenses to avoid going to the front. Perhaps as a result of this "no confinement" policy,

the majority of sentences by inferior courts entailed forfeiture and no confinement.<sup>53</sup> It was not infrequent, therefore, that some soldiers would have more than one forfeiture in effect at the same time.

Sentences in general courts-martial were relative severe. "It was standard practice in some commands to impose the maximum prison sentence established by the Table of Maximum Punishments."<sup>54</sup> Several reasons for these harsh sentences were given: to enforce discipline, to deter crime, and because of the callous attitude of permanent court members used in some commands.<sup>55</sup> In any event, as the theater matured and stockades were constructed, policies changed to allow prisoners with sentences from four to six months to be held in base section guardhouses.<sup>56</sup> Rehabilitation and clemency procedures returned some prisoners to their units; those with longer sentences were returned to the United States to serve confinement.<sup>57</sup>

#### Military Commissions

In July 1944 the 12th US Army Group requested the Theater Commander to authorize appointment of military commissions with jurisdiction in cases affecting the security or efficiency of combat forces.<sup>58</sup> This request was approved, and in October the 12th Army Group published a regulation on Military Commissions.<sup>59</sup> While military commissions were referenced in a number of the controlling Articles of War, they were not governed by statute as to jurisdiction, composition, or procedure.<sup>60</sup> Consequently, the guidance contained in an Army



field manual plus directives of Theater Army and subordinate commanders governed these commissions.

Generally, Army Group and then Army Commanders were authorized to appoint military commissions for the trial of persons not subject to US military law who were charged with espionage or with such violations of the law of war as threatened or impaired the security or effectiveness of US Forces. In accordance with procedures established, commissions were composed of not less than three officers together with a trial and defense counsel; the commissions could make their own rules of procedure and were not bound by evidentiary rules for courts-martial; and sentences in excess of those authorized in the Manual for Courts-Martial were permitted.<sup>61</sup> Theater Command policy and 12th Army Group regulation imposed certain requirements, such as for review of the record and for approval of certain sentences by the Army Commander, or above.<sup>62</sup> In order to avoid reprisals against Allied prisoners of war, war criminals not charged with espionage or threat to US Forces were not tried during hostilities. Also, when Army Commanders were delegated authority to appoint commissions, permission was withheld for exercising jurisdiction over certain individuals in areas previously occupied by Germany and over offenses occurring in Germany unless committed prior to establishment of military governments there.<sup>63</sup>

From September 1944 until 8 May 1945, 13 cases involving 29 persons were tried by military commissions.<sup>64</sup> All of these individuals were charged as spies except one, who was tried for

murder of two American prisoners of war. In the 12th Army Group overall, 38 persons were tried by military commissions. Of these, 35 were sentenced to death, 3 were acquitted, 3 death sentences were commuted to life, and 32 were executed by hanging or shooting.<sup>65</sup> Until December 1944 no death sentence was executed. Then "in view of the necessity for expeditious trials and prompt execution of Germans guilty of battlefield offenses during the Ardennes campaign, Army commanders were authorized to execute any death sentence imposed . . . unless confirmation was expressly required by the Army Group or Theater Commander."<sup>66</sup> While there was a paucity of precedent for military commissions in the field, the 12th Army Group After-Action Report heralded the procedures established in that command, attributing increased battlefield confidence, safety, and security for the soldiers to the swift, effective justice provided.<sup>67</sup>

Despite these praises, however, the lack of information and training about military commissions before World War II is apparent from the numerous conferences conducted by judge advocate personnel to address problems associated with them.<sup>68</sup> Confusion about the responsibility for military commissions is further exemplified by the differing treatment in after action studies. The General Board covers them under military justice administration,<sup>69</sup> while the 12th Army Group considers them an international law function.<sup>70</sup> Whether such confusion has been clarified today is not certain. No substantive material on the topic of military commissions is contained in either criminal

or international law portions of current Operation Law Instruction at The Judge Advocate General's School.<sup>71</sup> Responsibility for military commission legal advice similarly has been omitted from the current US Army Operational Concept for Providing Legal Services in Theaters of Operations.<sup>72</sup> Needless to say, evaluation is needed about the feasibility of and rules for the application of military commissions in the future.

#### War Crimes Investigations and Proceedings

So much has been written about war crimes during World War II that even addressing this subject seems presumptuous.<sup>73</sup> What more can be said? To be prepared to investigate and try such incidents in the future, however, commanders and judge advocates must understand the magnitude of the task undertaken in World War II and have some familiarity with key problems encountered.

Enemy Offenses. In planning for D Day, Judge Advocates considered that some arrangements should be made for prosecution of war criminals, but no specific plans were made.<sup>74</sup> By August 1944, however, reports of summary executions of American prisoners became so numerous that the Theater Commander established a Court of Inquiry to investigate law of war crimes.<sup>75</sup> This began what was later called the preliminary stage of four stages of investigation, apprehension, and prosecution of war criminals.<sup>76</sup> Overall, nearly 4000 cases were opened, and almost 500 war crime trials were held involving over 1600 accused.<sup>77</sup> In the 12th Army Group, for

example, over 1500 separate reports of investigation took the time of 325 members of that command.<sup>78</sup>

The preliminary phase, as described in the Report of the Deputy Judge Advocate for War Crimes, lasted roughly from early July 1944 until December of that year.<sup>79</sup> This period was marked by initial directives requiring investigation of war crimes by subordinate commands. The "first phase," from about January to July 1945, emphasized decentralized collection of evidence and apprehension of suspects. The extreme scale of the war crimes problem still was not fully recognized.<sup>80</sup> The second phase, which began after the Allied victory, was roughly July 1945 until July 1946. Investigations and trials during this stage remained decentralized with the Armies of Occupation.<sup>81</sup> During the third phase, from July 1946 through June 1948, the operational responsibility for the entire war crimes project was centralized in the Theater Headquarters under the Deputy Judge Advocate for War Crimes.

During the preliminary phase it was planned that investigative agencies from subordinate commands, such as the G2, provost marshal, and inspectors general, would perform investigations.<sup>82</sup> The Court of Inquiry came under the Theater Assistant Chief of Staff, G1, and a War Crimes Branch was established in the Theater Judge Advocate Section.<sup>83</sup> Theater and Army Group directives were published which identified offenses that were war crimes and listed information to be reported.<sup>84</sup> Checklists for investigating officers were developed.<sup>85</sup> Reports were forwarded through channels to the

Theater Headquarters for consideration by the Board of Inquiry. Reports became so numerous, however, that only the most flagrant cases were considered by the Board.<sup>86</sup> Procedures then were developed so that, once identified, names of suspected violators were put on Wanted Lists which were forwarded to commands for apprehension.<sup>87</sup> These lists also were circulated to Allies, and procedures evolved to exchange information and permit prosecution of cases by the Allies when victims of their nationality were involved. The task of apprehending suspects was enormous, and apprehended suspects were treated as prisoners of war. Due to concern of reprisals, the usual policy was that trials be delayed until after cessation of hostilities in Germany.<sup>88</sup> In addition, perhaps to influence the attitude of US soldiers toward enemy civilians, War Crime Bulletins were published by Judge Advocate Sections describing the atrocities of the Germans against US prisoners.<sup>89</sup>

During its first phase, the war crime effort developed more direction, but investigations still were very decentralized. Staffing, equipping, and training for the Theater Army War Crimes Group and investigating teams were problems because of the insufficient availability of qualified personnel and equipment.<sup>90</sup> Army Groups were directed to establish War Crimes Branches in their Judge Advocate Sections to be under the supervision of the Theater War Crimes Group.<sup>91</sup> Initially located in Paris, this Group moved to Wiesbaden, Germany, near the end of this phase to be close to field war

crime agencies.<sup>92</sup> By the end of the first phase, seven War Crimes Investigating Teams were organized of the 19 that were planned for 12th Army Group, 6th Army Group, Base Section headquarters, and the Theater Army.<sup>93</sup>

Phase two and three were marked by increased centralization of the war crimes effort. Personnel from Army Group War Crimes Investigating Teams were transferred to the Theater Army War Crimes Branch, which moved to Augsburg and ultimately to Munich to be close to a centralized detention and trial facility at Dachau.<sup>94</sup> Most trials occurred during these latter two stages. Except for the few cases tried by military commission and those tried by the International Military Tribunal, Nurenberg, cases were tried by Military Government Courts.<sup>95</sup> These courts were convened in phase two by the Third or Seventh Army Commanders and in phase three by the Theater Commander.<sup>96</sup> Trial procedures used were established in a Manual prepared by the Deputy Judge Advocate for War Crimes, European Theater.<sup>97</sup>

In a report which provided a historical summary of the problems encountered in war crimes investigation and prosecution, the Deputy Judge Advocate made several observations and recommendations. Perhaps most important, the report stressed the need for prompt investigation, collection of evidence, and apprehension of perpetrators. "Witnesses must be interrogated and perpetrators must be apprehended and detained before they are scattered."<sup>98</sup> In addition, the report stressed the need for centralized control of efforts pertaining

to investigation and detention as well as to exchange and dissemination of information in international channels.<sup>99</sup> The report concluded that it was futile to expect personnel in subordinate organizations with priority wartime missions, such as the provost marshal with prisoners of war responsibility, to effectively support war crimes work.<sup>100</sup> As non-lawyer investigators simply did not understand the evidentiary requirements of the information they gathered, the report also concluded that "experienced lawyer investigators must follow close behind the advancing armies in such numbers to assure prompt development of cases."<sup>101</sup> Finally, the report specifically recommended organizing and staffing of a Judge Advocate War Crimes Unit in each theater to be responsible for all aspects of the war crimes mission.<sup>102</sup>

Friendly Offenses. While most of the war crimes effort dealt with offenses committed by the enemy, it should not be concluded that conduct amongst American soldiers was beyond reproach. Upon entry of US forces into Germany, for example, there was a spiral of offenses, such as rape and looting of civilians, and there were substantial allegations of prisoner mistreatment and killings.<sup>103</sup> While these were considered individual offenses without systemic criminality, such as with Nazi groups, the probable explanation of some of these offenses was an "inadequate understanding [by US soldiers] of the obligation towards prisoners of war and civilian populations of occupied country."<sup>104</sup>

### Civil Affairs, Military Governments, and International Law

Civil Affairs pertains to liaison with civilian governments where armed forces are located but have not assumed supreme authority, such as those of the friendly countries of France and Belgium, which were liberated during World War II.<sup>105</sup> Military Government refer to the governments established under military authority of occupation, such as occurred in Germany.<sup>106</sup>

During World War II, civil affairs and military government matters were a primary responsibility of the Assistant Chief of Staff, G5. This responsibility encompassed advice on related legal issues. Consequently, about 200 especially trained and highly qualified non-JAGD lawyers were assigned to civil affairs and military government duties.<sup>107</sup>

Even though responsibility for civil affairs and military government advice rested with G5 sections, there were headquarters where the commanding general had the SJA perform these functions. For example, in the 12th Army Group the international law section of the SJA's office was charged with advising on questions pertaining to military government and administration of martial law.<sup>108</sup> Similarly, in the Fifteenth Army, which had occupation responsibility of the Rheinprovinz Military District in Germany, the SJA was responsible for reviewing military government cases and handling legal matters pertaining to the military government.<sup>109</sup> Unique issues considered are discussed below.



Civil Affairs. In countries liberated from German occupation, the Supreme Commander did not legislate, and no military courts were established.<sup>110</sup> Upon entering France a formal notice was prepared directing obedience of the civilian population to orders of the Allied commanders, but this notice was only to provide for the emergency breakdown of French civil authority.<sup>111</sup> The Supreme Commander reserved power in case of military necessity to try civilians in military courts, but this was never necessary.<sup>112</sup> In fact, there was a great deal of cooperation between civil authorities and Allied commanders. Local liberated government officials often legislated by decree or executive order to accommodate the interests of Allied commanders.<sup>113</sup> Issues addressed by local authorities frequently dealt with property interests of the allies, such as illegal receipt by local nationals of gasoline, war materials, and arms or ammunition.<sup>114</sup> French military courts were constituted as early as 16 June 1944 and tried several cases of treason, espionage, and looting by civilians soon after the Normandy landing.<sup>115</sup> Similarly, in Belgium, Holland, and Luxenburg local authorities tried cases for blackmarketing and pillaging, although there were sometimes allied complaints that sentences were too mild.<sup>116</sup>

Several troublesome issues in liberated territory related to the right of the Allied Forces to retain and dispose of captured war material. Questions arose, for example, about the nature of what appeared to be French-owned property acquired by the Germans and then recaptured by the Allies. Eventually, a

directive issued by the Supreme Headquarters categorized material and clarified disposition to be made.<sup>117</sup>

Military Governments. Legislation of the Supreme Allied Commander included a proclamation, ordinances, laws, and notices, the latter of which were authorized to be published by subordinate commanders.<sup>118</sup> The proclamation, which was required to be posted upon occupation of German territory, established a Military Government and vested supreme legislative, judicial, and executive authority and power in the Supreme Commander.<sup>119</sup> Ordinances defined 19 specific crimes punishable by death and established Military Government courts.<sup>120</sup> Numerous laws were legislated which, inter alia, abrogated Nazi law, abolished Nazi courts, dissolved the Nazi party, provided for the authority of the Military Government, established a property control law, and imposed censorship upon all communications.<sup>121</sup> Notices by local commanders usually merely implemented legislation of the Supreme Commander.<sup>122</sup>

One particularly troublesome legislative issue concerned fraternization. Under a non-fraternization policy established by the Supreme Commander in September 1944, American military personnel could not speak to Germans except in the course of official business.<sup>123</sup> Subordinate commanders found this policy exceptionally difficult to enforce, and so some division commanders published notices prohibiting German civilians from speaking with American military personnel.<sup>124</sup> These notices often held parents responsible for their children's whereabouts. Eventually, the Supreme Commander clarified the

non-fraternization policy as an internal one, not to be subject to enforcement against civilians.<sup>125</sup>

Administering military governments involved not only the legislation of the Supreme Commander but also the rules of international law. Thus, legal personnel were involved with interpreting Military Government legislation as well as international legal principles. Advice was given on such topics as the rights of residents in liberated territories to personal property located in occupied territory, rights of displaced persons, legality of promised payments by the United States to German families, disposition of political prisoners held in concentration camps, validity of claims of German nationals against the Nazi government, employment of German citizens, disposition of captured property, improper use of German prisoners to clear mine fields, and legislative authority of the Supreme Commander.<sup>126</sup>

Military Government courts had jurisdiction over all persons in occupied territory except for servicemen serving under the Supreme Commander or other allied nations and prisoners of war.<sup>127</sup> There were three types of courts: general, intermediate, and summary. These were distinguishable primarily by composition and punishment authority. General Courts were composed of not less than three members, one of whom was required to be a lawyer; any lawful sentence could be imposed including death.<sup>128</sup> One officer could sit as an Intermediate or Summary Court, but Intermediate Courts often had two or three officers, one of whom was a lawyer.<sup>129</sup>

Summary courts were to have a lawyer when practicable, but use of lawyers was unusual.<sup>130</sup> The sentence limitation of Intermediate Courts was imprisonment for 10 years and fine of \$10,000, or both; for a Summary Court it was one year and \$1,000, or both.<sup>131</sup> Rules of procedure insured certain rights for an accused, such as of cross-examination of witnesses and of consultation with a lawyer.<sup>132</sup> Review of cases was mandatory if the sentence exceeded one year imprisonment or fine of \$1,000; final review usually was required by an Army Commander.<sup>133</sup>

Between 18 September 1944 and 8 May 1945 more than 16,000 cases involving 20,000 persons were tried by Military Government Courts.<sup>134</sup> More than 99 percent of these were by Summary Courts, and about 70 percent of these were for curfew or circulation violations.<sup>135</sup> Other cases involved looting, espionage, possession or use of firearms, making false statements, larceny, and assault.<sup>136</sup>

Upon reviewing the legal phases of civil affairs and military government operations during World War II, the Report of the General Board made several recommendations worth noting. First, the Board favored assignment of civil affairs and military government legal duties to the judge advocate section, finding this arrangement more effective than segregation of duties to G5.<sup>137</sup> No good reason was perceived why civil affairs staff sections should have different legal advisors than commanders and other staff sections. Similarly, it was the nearly universal view of senior judge advocates that

legal advice for G5 should be under the supervision of the SJA.<sup>138</sup> Next, the Board considered it impracticable to require lawyers, who were relatively few in number, to serve on military government courts, especially Summary Courts.<sup>139</sup> Finally, the Board demonstrated its disfavor with the anti-fraternization policy referring to the failure of a prior such policy to obtain practical results in World War I.<sup>140</sup> "We learn from history that we do not learn from history."<sup>141</sup> The Board suggested that an alternative method be found to facilitate security of US Forces.

International Law. In addition to civil affairs and military government questions, many legal questions dealt with application and interpretation of rules of land warfare. In anticipation of such issues and to help soldiers in the field deal with such concerns, the Staff Judge Advocate, Third US Army, prepared and distributed over 35,000 copies of a pocket sized pamphlet entitled Soldiers Handbook on the Rules of Land Warfare.<sup>142</sup> Topics covered included division of enemy property, bombardment, treachery and quarter, ruses and stratagems, communications with the enemy, prisoners of war, military occupation, penalties for law of war violations, and treatment of the sick, wounded, and dead. Other issues typically addressed by judge advocates included the legality of resuming combat operations by US soldiers after capture by the enemy and recapture by the US, use of the Red Cross emblem on vehicles and aircraft, the right to employ captured German medical personnel, and whether a detachable arm band

constituted sufficient distinction to afford protection as a lawful belligerent.<sup>143</sup> Similarly, there were many questions in connection with prisoners of war, including matters of employment and payment, responsibility for German soldiers left in the care of German civilian hospitals, the rights of prisoners being investigated for war crimes, and parole of prisoners.<sup>144</sup> Generally, detained enemy civilians received full protection of the Geneva Convention; German Army deserters were treated as prisoners of war regardless of the desertion date; and prisoners of war, though not subject to compulsory manual tasks except when incident to operation of their camps, were compensated for work in their own camps.<sup>145</sup>

Senior judge advocates questioned by the General Board made several recommendations relevant to international law issues. These included that the rules of land warfare be changed to: clarify the quantity of rations to be provided to prisoners of war; to specify handling of Red Cross packages not deliverable to a specified address; and to distinguish procedures for trial of offenses committed by prisoners of war after capture.<sup>146</sup> Other staff judge advocates recommended more thorough education about the laws of war, suggesting that even lawyers were ill prepared to address many of the questions that arose. In addition, there should be "more intensive education of troops prior to combat to help avoid breaches of the laws and usages of war."<sup>147</sup>

### Military Affairs

Military Affairs sections of SJA offices advised on a wide variety of miscellaneous legal issues including command and staff matters, legal assistance, and claims. While Army Group and Army headquarters usually had a Military Affairs Branch, separate Legal Assistance and Claims Branches were unusual.<sup>148</sup> Research material generally was available at higher headquarters, but this was not true of lower units and mobile commands where there was a "definite lack of competent research facilities."<sup>149</sup> Complex issues, therefore, frequently were considered at higher headquarters for opinion. Information of current interest and value were disseminated by higher headquarters to subordinate units. For example, the Judge Advocate, 12th Army Group, distributed periodic information circulars to all general courts-martial jurisdictions within the command.<sup>150</sup> Advice given by military affairs lawyers included topics such as payment of French civilian laborers, securing assets of deceased military personnel, retention of funds found in liberated territory, voting rights, marriage of military personnel in liberated and occupied territory, support of dependents, jurisdiction of civilian courts over military personnel, procurement of ranges in liberated territory, line of duty determinations, and military personnel law questions.<sup>151</sup> Several of the more frequently addressed issues and problems are worth more explanation.

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Citizenship and Naturalization. Resident aliens inducted into the Armed Forces sometimes found themselves fighting against the country of their citizenship. If captured, these soldiers faced severe punishment. To circumvent the long and laborious process for gaining US citizenship, Congress passed the Second War Powers Act of 1942, which simplified citizenship procedures for inducted resident aliens.<sup>152</sup> Eventually, mobile naturalization teams using vice-consul from the American Embassy in Paris travelled throughout the combat area to naturalize resident alien soldiers.

Other troublesome citizenship problems arose regarding the status and rights of foreign nationals who married soldiers and of children born out of wedlock. Because of non-citizenship status, for example, judge advocates found no relief agency available to assist inadequately supported foreign wives and illegitimate children.<sup>153</sup>

Oaths and Acknowledgments. Because of inadequacy of legal reference material, oftentimes judge advocates were unable to advise on the state requirements for proper execution of a large number of documents, such as deeds, affidavits, powers of attorney, and depositions.<sup>154</sup> Immediately after the War it was expected that many of the documents prepared by Army lawyers would be contested.

Effects of Deceased Persons. Handling the effects of deceased military personnel was covered under Article of War 112, which provided for appointment of a summary court to secure the effects and pay debts of the deceased. Problems



arose over compliance with probate procedures of foreign governments, however. This most noticeably occurred in instances where servicemembers had deposited funds in British banks. Negotiations with British authorities in 1942 established procedures whereby appointed summary court officers could discharge their duties while still complying with the laws of Britain.<sup>155</sup> Many ensuing directives by both US and British officials were interpreted by legal advisors. These negotiated procedures illustrate the value and need of anticipating issues and establishing rules that consider unusual legal issues likely to occur during combat operations.

Claims. Another example of anticipating combat contingencies arose in the claims area. During the early years of World War II United States officials studied the British Claims system in anticipation of sending American forces to Britain. It was anticipated that there would be many claims by British nationals arising out of acts or omissions of American servicemembers.<sup>156</sup> During the early phases of the War, responsibility for investigation under the British system was placed on unit commanders, who forwarded their findings to the British Claims Commission for approval.<sup>157</sup> Basically, this was the system employed in the United States during peacetime. In combat, however, these procedures were expected to be unsatisfactory, and so British claims organizations were expanded to relieve tactical commanders of any responsibility for processing claims, except for making a prompt preliminary

report.<sup>158</sup> Permanent claims offices were established in area or base section commands; they had the primary duty of investigating and reporting claims to the British Claims Commission.<sup>159</sup>

After Congress passed the Foreign Claims Act in 1942, the Secretary of War appointed a Claims Commission for the European Theater of Operations.<sup>160</sup> Eventually, US claims officers were appointed and co-located with British area claims offices. The US Forces thereby adopted an area claims system similar to the British system. By 1943 the United States Claims Service became a separate staff section on the staff of the CG, Service and Supply, European Theater of Operations.<sup>161</sup> Planning for the invasion, the Claims Service anticipated the need to function immediately behind the assault troops to preclude the accumulation of an insurmountable backlog of claims.<sup>162</sup> Consequently, claims teams were created to operate as independent units following behind combat units. Though many legal issues were addressed relating to the varied laws and procedures of foreign governments, the efficiency of the claims system was considered to have greatly promoted local national cooperation with military authorities.<sup>163</sup> One recommendation made by the General Board, however, was that field investigators be given authority to make on-the-spot settlements of small claims without the necessity of forwarding investigations to distant claims commissions for approval.<sup>164</sup>

Dependency, Domestic Relations, Wills, and Powers of Attorney. Legal assistance was one of the most extensive fields of legal services.<sup>165</sup> What should be recalled is the extraordinary volume of actions and the many differences in laws considered. After World War II the General Board noted judge advocate recommendations that urged efforts to establish uniform laws, especially in the areas of wills, divorce, service of process, and depositions.<sup>166</sup> Two other recommendations were that a digest system be implemented to distribute changing rules to field judge advocates, such as in the area of dependency regulations,<sup>167</sup> and that more study be given during peacetime to handling of legal matters unique to war, such as distributing the estates of deceased soldiers.<sup>168</sup>

## CHAPTER 3

### GRENADA OPERATIONS

The Grenada operation, Urgent Fury, represents a low intensity conflict which has a far greater probability of occurrence on the spectrum of conflict than the conventional World War II scenario. Legal issues confronted in Grenada, however, have remarkable similarities to concerns faced during World War II.

#### Overview

U.S. military forces landed on Grenada on 25 October 1983 to protect the lives of U.S. medical students, to restore a democratic government, and to eradicate Cuban influence on the island.<sup>169</sup> Landing by air and sea at several locations throughout this 119 square mile Caribbean island, the total number of U.S. forces deployed reached a peak of seven battalions by 28 October.<sup>170</sup> In all, nine combat battalions participated: one US Marine Corps Battalion, two ranger battalions, and six battalions of the 82nd Airborne Division, XVIII Airborne Corps. By 28 October all major military objectives had been achieved, and the ranger battalions had begun to depart.<sup>171</sup> Combat operations ended by 2 November, and, although some military personnel remained for peacekeeping activities, by mid-December all combat units had departed.

During this relatively short operation, military forces assaulted and secured operational objectives such as airfields, enemy facilities, and medical complexes where students were

housed.<sup>172</sup> Overall, nearly 600 medical students were evacuated, over 600 Cuban and Grenadian People's Revolution Army personnel were captured, and nearly 300 US, Cuban, and Grenadians were killed, wounded, or injured.<sup>173</sup>

#### Judge Advocate Organization

While there were a number of legal issues involved in the decision to deploy U.S. forces to Grenada, focus here will be on Judge Advocate services provided in support of combat operations.<sup>174</sup>

Even though an initial operational mission was passed from XVIII Airborne Corps to the 82nd Airborne Division on 22 October, the first formal judge advocate involvement began on the morning of 23 October when the Corps Deputy Judge Advocate was ordered to report to Corps Headquarters for an urgent meeting.<sup>175</sup> On the next day the Corps SJA informally briefed the SJA, 82nd Airborne Division, about the operation.<sup>176</sup> On that same day, Division judge advocates, still apparently unaware of the exact nature of the operation, reported to the deploying 2nd Brigade to issue powers of attorney and answer personal legal questions.<sup>177</sup> The first formal briefing about the operation for the Division SJA came on the evening of 24 October. Originally, the Division deployment plan did not include judge advocate support with the command group, but during this pre-deployment briefing the Chief of Staff, at the urging of the SJA, authorized deployment of a judge advocate as part of the Assault Command Post.<sup>178</sup>

On 25 October the SJA departed by aircraft with other members of the Assault CP. The trial counsel normally associated with the 2nd Brigade similarly deployed with his brigade as did the 3rd Brigade trial counsel when his brigade deployed.<sup>179</sup> Eventually, beginning on 29 October, a small number of additional judge advocate personnel from XVIII Airborne Corps, the U.S. Army Trial Defense Service, the Joint F. Kennedy Center for Special Warfare, and the U.S. Army Claims Service arrived in country to provide legal support.<sup>180</sup> The SJA returned to Ft. Bragg with the Assault CP on 4 November, but the Division Deputy SJA deployed on that day to continue to provide legal services for remaining elements of the 3rd Brigade. A Division SJA representative ultimately remained in Grenada until about mid-December when the last combat element departed.

While a total of only eight judge advocates deployed with the 82nd Airborne Division, several of these being replacements for redeploying personnel, most lawyers assigned to the Division remained at Ft. Bragg.<sup>181</sup> These judge advocates participated in especially conducted family assistance briefings and provided many other normal services.<sup>182</sup> In addition, rear element judge advocates supported legal personnel in Grenada by researching issues and forwarding needed legal forms and documents to Grenada with the Division Air Courier.<sup>183</sup>

From the time of his notification about the operation until his redeployment, the SJA, 82nd Airborne Division, kept a notebook identifying the issues he confronted.<sup>184</sup> Reflected in his notes are typical concerns that illustrate the issues which a judge advocate could encounter in future conflicts. These include: administration of the prisoner of war and detainee camp, to include segregation and classification of prisoners, detainees, and civilians; proper use of captured medical personnel; disposal of bodies and grave registration; legal assistance to servicemembers; division policy regarding protection of private property and looting; destruction of private property, such as livestock; arrangements for deployment of defense counsel; seizure and use of private vehicles for military purposes; disposition of captured weapons and equipment; combat bombing of a hospital; and establishment of rules of engagement. Interestingly, the Caribbean Security Force operated the prisoner of war camp until 28 October when Provost Marshal personnel arrived to assume authority. The first reports of military justice offenses, for larceny and assault of a noncommissioned officer, reached the SJA on 29 October; CID personnel did not arrive until 30 October. Also by the 30th, over 200 powers of attorney had been completed by the lawyers with the combat forces, and many young soldiers were asking for wills.

### Military Justice

So many 82nd Airborne Division court members and witnesses deployed to Grenada that no courts-martial were conducted at Ft. Bragg, the Division Rear, until after most units returned.<sup>185</sup> The departure of nearly all commanders created jurisdictional issues for the Rear. Only one special courts-martial convening authority, the 1st Brigade Commander, remained, and so completion of a number of actions was postponed, such as approving certain discharges, referring cases to trial, and imposing nonjudicial punishment on rear detachment personnel of deployed units.<sup>186</sup> Due to the timely return of commanders, no special action was necessary to resolve these problems during the operation.

In Grenada, there was very little criminal justice activity for accompanying lawyers during the short combat phase of the operation. When the fighting stopped, however, commanders began action on disciplinary problems which had occurred, such as assault, sleeping on guard, disobedience of orders, and disrespect charges.<sup>187</sup> Thus, although no defense counsel had deployed initially, by the fourth day of the operation incidents requiring counselling had occurred and arrangements were made to deploy Trial Defense Service attorneys.<sup>188</sup>

One of the most significant military justice related issues in Grenada involved disposition of private and public property. Understandingly, soldiers wished to retain souvenirs and war trophies as reminders of their experience, but wrongful



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taking of property is a crime. While in Grenada rules on proper and improper retention of property were stressed by commanders, and notices explaining the law and the limited war trophy exception were published as directives.<sup>189</sup> Nevertheless, upon return to Ft. Bragg a number of soldiers were tried or given nonjudicial punishment for improperly retaining captured items.<sup>190</sup>

#### International Law

A number of Law of War and Civil Affairs issues were considered by judge advocates on the ground in Grenada. Some of these were handled by 82nd Airborne Division and XVIII Airborne Corps lawyers; others were considered by an expressly deployed Judge Advocate international law expert and a civil affairs officer from the JFK Center for Special Warfare.<sup>191</sup> Perhaps the most significant activities of these Judge Advocate advisors were making preliminary investigations of incidents and drafting legal documents for publication by both military and civilian authority. In this regard, it is noteworthy to recall that events in Grenada were subject to severe scrutiny and publicity by media personnel. The early and proper handling of sensitive legal issues and the ability of legal advisors to consider ramifications beyond the immediate combat action, therefore, were perhaps the most important contributions they made to the operation. Issues addressed included the following.

Prisoners of War. As noted earlier, the 82nd Airborne SJA gave early advice on care and treatment of prisoners and detainees. Allegations of prisoner mistreatment arose in the press, however, due to blindfolding of several prisoners who were photographed.<sup>192</sup> A document drafted by Army lawyers and promulgated by the military commander on treatment of detainees helped defray criticism. Eventually, the Secretary of State clarified the law of war at a press conference, citing the propriety of blindfolding prisoners under the 1949 Geneva Convention.<sup>193</sup>

War Crimes. While there were a number of allegations of war crimes, the value of quick, thorough investigation by lawyers familiar with the law was clearly demonstrated. For example, during combat operations U.S. planes destroyed a portion of a mental hospital on the island.<sup>194</sup> This damage resulted in the death or injury of several hospital inmates and was quickly reported in the press. Upon investigation by a judge advocate with international law expertise, it was noted that the hospital was not properly marked with red cross symbols; in fact it had markings of the enemy People's Revolutionary Army.<sup>195</sup> Further investigation disclosed that U.S. forces had received fire from the base of the hospital. Pictures were taken by the investigating lawyer which helped demonstrate that no law of war violation was committed by U.S. forces.<sup>196</sup> In another incident, the events surrounding the alleged killing of a downed Marine pilot were clarified by the

quick reporting and rapid investigating by a Judge Advocate.<sup>197</sup>

Local Ordinances. In the aftermath of the combat operations, establishing law and order on the island was a priority of the civilian authorities. On 1 November the Governor General issued a proclamation declaring a state of emergency.<sup>198</sup> By mid-November the Acting Attorney General of Grenada, with the assistance of an Army lawyer, devised a preventive detention ordinance which described authority for arrest, detention, and search of persons acting contrary to the public interest.<sup>199</sup> This ordinance was extended to permit members of the U.S. Peacekeeping Force to stop and search vehicles when necessary. Advice given on the wording of this ordinance demonstrates the close involvement of judge advocate personnel with Department of State representatives as well as local officials. The need for judge advocate familiarity with civil affairs issues is obvious.

#### Administrative Law

Deployment of most board members required postponement of scheduled 82nd Airborne Division board actions, but administrative law attorneys in the Rear continued to provide advice on issues related to combat operations.<sup>200</sup> For example, advice was given about the law on captured and abandoned property.<sup>201</sup> In this regard, communications between Grenada and the Rear facilitated resolution of legal issues because research could be done at Ft. Bragg where reference material

was available. Limited references in Grenada initially made research of issues difficult, the only reference being FM 27-10, The Law of Land Warfare.<sup>202</sup> After completion of combat operations, a useful function of judge advocate personnel was to investigate various incidents. For example, in addition to investigation of claims and law of war incidents by non-Divisional lawyers, Division judge advocates formally investigated matters for the command, such as a strafing incident and homicide.<sup>203</sup>

#### Legal Assistance

During the initial phases of Urgent Fury both SJA and Trial Defense Service attorneys serving the 82nd Airborne Division turned nearly their complete attention to legal assistance matters.<sup>204</sup> Counsel were dispersed to alerted units where they executed numerous wills and powers of attorney. As the mission progressed, unit requests for assistance began to exceed the ability of assigned lawyers to provide services. Despite the high readiness status of the Division and the relatively good peacetime predeployment program, it was estimated that within the first 72 hours of the operation approximately 1500 powers of attorney and over 100 wills were executed.<sup>205</sup>

Legal assistance demands in Grenada were similarly unanticipated. By the third day of the operation there were long lines of soldiers waiting to see the single judge advocate accompanying each Brigade.<sup>206</sup> In addition to wills and powers

of attorney, perhaps due to the onset of payday, many questions involved paying debts and cashing payroll checks.<sup>207</sup>

Assistance to family members in the Rear was also notable. Judge advocates participated in Division family assistance briefings, given to family members of deploying servicemembers, and staffed the Family Assistance Center, which was manned around-the-clock.<sup>208</sup> Obtaining powers of attorney from servicemembers in Grenada or locating unit-retained copies of completed documents for sponsors were amongst the services provided.<sup>209</sup> In addition, coordination with local banks was accomplished to allay fears of many family members that these banks would not honor general powers of attorney to cash payroll checks.<sup>210</sup>

### Claims

Claims operations in Grenada constituted a significant judge advocate activity which facilitated achievement of good will amongst the Grenadian people.<sup>211</sup> Claims operations did not occur, however, until after most combat operations had ended.

Initial contact between judge advocate personnel of XVIII Airborne Corps and the United States Army Claims Service, Ft. Meade, Maryland, about appointment of a Foreign Claims Commission occurred on 27 October,<sup>212</sup> two days after the deployment of the 82nd Airborne Division assault forces. On 28 October the Department of Defense gave the Army single service responsibility to settle claims arising from U.S. military

operations in Grenada.<sup>213</sup> On 30 October the XVIII Airborne Corps command representative in Grenada directed initiation of a claims operation. Because of then limited communications between the island and the U.S., however, it was not until 2 November that the Army Claims Service appointed two one-member and one three-member foreign claims commissions.<sup>214</sup> Four of these commissioners were lawyers: three from XVIII Airborne Corps and one from the JFK Warfare Center; the fifth was an active duty civil affairs officer.<sup>215</sup>

Upon coordination with local officials, a site for a central claims reception facility was located, and from 31 October until 7 November damage surveys were conducted at various locations around the island.<sup>216</sup> Public announcements of the opening of the office were made, and the office opened on 7 November.

In addition to settling claims for personal injury, death, and property damage incident to non-combatant activities under the Foreign Claims Act, Army Claims personnel eventually coordinated with the Department of State and the Agency for International Development to obtain funds and established procedures for claims arising from combat operations.<sup>217</sup> Military and civilian experts from the US Army Claims Service made a number of visits to Grenada, and, although the original claims office on the island closed in mid-December 1983, claims continued to be processed. By late 1984, over 1300 claims in the amount of nearly \$2,000,000 had been paid.<sup>218</sup>

While the XVIII Airborne Corps and US Army Claims Service after action reports listed a goodly number of lessons learned, two are of particular interest to commanders and staff judge advocates.

Early Investigation. Ascertainment of relevant facts is essential to payment of legitimate claims. Because combat damage is not payable under the Foreign Claims Act, it must be determined, inter alia, whether damage or injury was caused by US forces during combat. Interests of both the claimant and government are served when facts are ascertained quickly. Consequently, Foreign Claims Commissioners should be appointed before deployment, deploy early in an operation, and become familiar with the tactical situation.<sup>219</sup> Claims personnel should have transportation assets and, for security purposes, be armed.

Use and Disposition of Property. During the early stages of Urgent Fury, property was damaged or taken by military personnel and homes and shelter were abandoned by inhabitants. In some cases private property was removed from local buildings and used. After the Claims Office opened, claims were submitted, for example, for damage to buildings from shelling, for "looting," for use and damage of vehicles seized, and for use of buildings as shelters.<sup>220</sup> Investigation often disclosed that alleged looting could not have been done by US Forces, but the allegation itself demonstrates the need for knowledge of property rules, disciplined soldiers, and an established system to investigate and refute charges of misconduct. This can be

accomplished, for example, by issuing receipts for seized property and by making an inventory and recording the condition of property requisitioned or seized. In summary, establishing procedures for requisitioning property and training soldiers about proper and improper disposition of captured and abandoned property is necessary to protect not only the claimant but also soldiers, the command, and the government.

In many cases, claims were paid for damage probably not caused by US soldiers because of the lack of proof about the condition of the property when seized, as with vehicles, for example.<sup>221</sup> Other claims, such as for use of buildings, were not payable as claims but were in some instances ratified as leases by the Corps of Engineers, the organization with authority for real estate transactions.<sup>222</sup> Similarly, a significant number of claims were submitted from individuals and businessmen who had provided goods and services to US forces. These were generally contractual in nature and thus not payable under the Foreign Claims Act.<sup>223</sup> From the standpoint of the SJA and commanders, the whole claims operation demonstrates the critical need for predeployment establishment of procedures for procurement of property and education about proper use and disposition of property.<sup>224</sup>



## CHAPTER 4

### OBSERVATIONS AND CONCLUSIONS

As the platter of legal issues of the currently thin peacetime Army grows, there is a tendency to avoid dessert. Unfortunately, sometimes the dessert is wartime planning. Some judge advocates view wartime planning as no big concern; the lawyers will be there when needed as they have in the past, the view goes. The current interest in operational planning suggests that this is not the view of current Judge Advocate leadership, but concern still exists that dessert not be confused with the entree. One speciality that makes Army lawyers different from civilian attorneys is expertise in wartime legal services; judge advocates must never lose competence in this area.

In order to provide quality legal services during conflicts, judge advocates practicing at the operational level must understand the differences between peacetime and wartime services, must plan for transition between these periods, and must train in peacetime to handle substantive issues unique to conflicts. This review of legal services during World War II and Grenada provides guidance for performing these functions. In addition, the study identifies institutional legal issues that require further consideration by the Army as a whole. While subject to different interpretations, some of the more important operational and institutional issues will be addressed together under the topics that follow.

Military Commissions. Although mentioned in the Manual for Courts-Martial and the Uniform Code of Military Justice,<sup>225</sup> guidance for use of military commissions is virtually non-existent. This must be corrected. The Army should publish guidance on this topic and develop a training program to educate Army lawyers and commanders about the use of these commissions.

Civil Affairs and Military Governments. While nearly all civil affairs units in the Army are in the Reserve,<sup>226</sup> experience in both World War II and Grenada demonstrates that judge advocates are involved in providing legal advice about military relations with civilian governments. Civil affairs and judge advocate missions ought to be examined and doctrine established about the relationship between the staff judge advocate and G5 lawyers during conflicts. An evaluation should be conducted to determine the number of especially qualified civil affairs judge advocates likely to be needed before deployment of Reserve personnel. A program should be established to gather and publish key reference material, to include exemplary proclamations, ordinances, laws, and notices, and to train both judge advocates and commanders about authority and responsibility for martial law, civil affairs, and military governments.<sup>227</sup>

International Law. Experience demonstrates that during conflicts judge advocates must be prepared to provide advice on law of war issues to include prisoners of war, disposition of property, and war crimes. During future conflicts, it should

be expected that the media will be present and public opinion formed based on proper compliance with accepted legal standards. Consequently, it is critical that soldiers, commanders, and judge advocates know and comply with rules of land warfare. Doctrine, training programs, and educational material in this area must be evaluated and improved. It is suggested, for example, that the Army have advanced degree international law attorneys assigned, at least to each Corps and Theater Army, as long-range operational planners. Under the staff judge advocate, functions of these officers should include conducting law of war training, reviewing operations plans, coordinating transition of legal services from peace to war, being responsible for war crimes investigations, and serving as a civil affairs and military government advisor. By doctrine, the Corps should be responsible for law of war investigation teams, and operational plans should include early deployment of such teams with subordinate combat units. Training in law of war should be emphasized as part of every Staff Judge Advocate Course and Senior Officer Leadership Orientation at The Judge Advocate General's School.

Compendium of Reference Material. Obviously, no one knows the answers to all legal questions that are likely to occur during conflicts, and it is likely that relatively inexperienced judge advocates will accompany deploying forces to combat zones. This likelihood makes it imperative that key reference material expected to be useful during the initial phases of combat be published in a lightweight, transportable

document. Perhaps a compendium in the current "Update" format would be acceptable. Such a publication should include reference material on law of war, prisoners of war, disposition of property, graves registration, civil affairs, and military governments, amongst other topics.

Study of Wartime Legal Issues. To better understand their unique role of providing legal support during conflicts, all judge advocates should be afforded the opportunity to study lessons learned from prior conflicts. Just as operational commanders study tactics and lawyers study case precedent, judge advocates should study legal services from past conflicts. To facilitate such study, judge advocate wartime after-action reports, oral histories of senior judge advocates, and other historical material, to include judge advocate portions of annual historical summaries, should be consolidated at The Judge Advocate General's School.<sup>228</sup> Oral histories should be completed for key judge advocates who served in Vietnam, Grenada, Korea, and recent peacekeeping operations. Perhaps such projects could be accomplished by Judge Advocate Graduate Course Students. In addition to military commissions, civil affairs issues, and military government rules, other topics deserving study include peacekeeping operations, capital referrals during combat, and alternatives to judicial and nonjudicial punishment during combat. Finally, a format for annual historical summaries should be developed to facilitate recording of useful historical data from staff judge advocates in the field.

7

Planning the Transition from Peacetime to Wartime Services. Planning for transition from peace to war at the operational level requires consideration of contingency plans of the unit served as well as other variables, such as whether plans are for a division, corps, or echelon above corps. In any event, the World War II and Grenada experiences suggest that legal service planning should be divided into at least four phases: predeployment, deployment, combat, and post-combat. Some of the key planning considerations for these phases follow.

Military Justice. Operationally, transfer of pending cases to another jurisdiction upon deployment should be considered along with when and where trials in the unit area will be held and whether defendants and witnesses will be immediately returned to a centralized location, such as the rear, pending investigation and trial. While during combat there may be a period of inactivity in initiating criminal actions, this period is likely to be short, and so plans should insure early availability of defense counsel and military judges. The need for defense counsel under the current Uniform Code of Military Justice is likely to be greater than those authorized in peacetime, especially for consultation regarding nonjudicial punishment.<sup>229</sup> Consequently, consideration should be given to deploying defense counsel with brigade or even smaller sized units. A plan for establishing area courts-martial jurisdiction to support combat commands should be considered. Local staff judge advocates and commanders should

consider the parameters of capital referrals and those types of cases that exigencies may preclude trying.

Systemically, the Army should evaluate establishment of a commanders' summary disciplinary system to be operational during conflicts. Such a system could authorize increases in current nonjudicial punishment limits and exclude the rights to consult with counsel and demand trial by courts-martial, for example. Recalling that in World War II accused personnel were defended even in courts-martial by readily available non-lawyers, it seems reasonable that an alternative procedure be established to provide combat commanders with an effective and timely disciplinary system. If the right to consult with defense counsel continues for nonjudicial punishment, the feasibility of deploying defense counsel to brigade or lower units and expanding their mission responsibility, such as for legal assistance, should be evaluated. Finally, doctrinal responsibility for activating area courts-martial authority, in area support groups, for example, should be identified.

Administrative Law. Similar to military justice actions, predeployment planning should consider transfer of administrative actions to another convening authority upon deployment. Predeployment training of commanders and soldiers should emphasize disposition of property rules and procedures. During operations, a system of researching legal issues for forward deployed lawyers should be established.

International Law. Predeployment training of soldiers on law of war issues likely to occur is critical. In addition, responsibility should be set for activation of war crimes investigating teams. If war crimes investigation remains the responsibility of the Central Investigation Division, training of CID personnel about unique investigative requirements of law of war offenses should be accomplished. Consideration should be given to establishment of law of war investigating teams under the direction of judge advocates. Commanders and lawyers should consider civil affairs and military government issues likely to occur during combat and post-combat phases of any operation.

Claims. Predeployment training of combat commanders and soldiers should emphasize requirements of the Foreign Claims Act. Responsibility should be established and arrangements made for claims commissions to follow closely behind combat echelons. Insuring that commanders and soldiers understand the value of timely investigation and responsibility of the commissions is essential.

Legal Assistance. Predeployment programs should emphasize the value to soldiers of keeping documents current that provide for family members during a servicemember's absence. During deployment, staff judge advocates should anticipate realignment of assets to provide legal assistance both to deploying personnel and family members remaining at the unit base area. Depending on the scope of the operation, responsibility for legal assistance at the base area may be transferred to other

organizations. For example, if Trial Defense Service counsel are made available to brigade or smaller units for military justice actions, perhaps they also should be responsible for legal assistance. The likelihood of using judge advocates who in peacetime normally perform other legal duties emphasizes the necessity for continual cross-training of all lawyers in the legal assistance speciality.

Administrative Considerations. Plans for legal services during war should anticipate eventual availability of Judge Advocate Service Organization personnel.<sup>230</sup> Key functions of these personnel would be to provide war crimes and claims investigating teams and staff judge advocate support for area courts-martial authorities.

#### Postscript

We learn from history that we do not learn from history. In order to be prepared to handle legal issues likely to occur during future conflicts, serious effort must be made during peacetime to study and to train commanders, soldiers, and lawyers about the unique legal issues that occur in war. This responsibility should not be taken lightly; it is the key distinction of service as an Army lawyer.



## ENDNOTES

1. Report of the General Board, United States Forces European Theater, Legal Questions Arising in the Theater of Operations (General Order 128, 17 Jun 45) at 1 (retained by the Army Military History Institute) [hereinafter cited as Study 87].

2. E.A. Gates and G. Casida, Report of The Judge Advocate General by the Wartime Legislation Team (Sep 1983) at 48.

3. Id.

4. Compare U.S. Army Training and Doctrine Command Pamphlet 525-52, Military Operations, US Army Operational Concept for Providing Legal Services in Theater of Operations (21 Mar 86) with Department of the Army Field Manual 100-16, Support Operations: Echelons Above Corps (April 1965) at 7-10 to 7-11.

5. One notable exception from Korea is the Interim Historical Report, War Crimes Division, Judge Advocate Section, Korean Communications Zone (extract cumulative to 30 Jun 53). Annual Historical Summaries of the Military Assistan Command, Vietnam, retained at the Center for Military History, Washington, D.C., are being declassified. See also George S. Prugh, Vietnam Studies, Law at War: Vietnam (1975).

6. Report of the General Board, United States Forces, European Theater, Judge Advocate Section In the Theater of Operations (General Order 128, dated 17 Jun 45) at 1,2 (retained by the Army Military History Institute) [hereinafter cited as Study 82]

7. History of the Branch Office of The Judge Advocate General with the United States Forces, European Theater, 18 July 1942 - 1 November 1945 (1 Nov 1945) Vol. I at 21 [hereinafter cited as TJAG Branch History]. The history of the Branch Office and Board of Review was written to provide a treatise for future guidance about the many administrative and military justice problems confronted in the European Theater. Id. The two volume work contains a compilation of statistical data about courts-martial as well as background on constitutional, evidentiary, and substantive legal issues considered by the Board of Review.

8. Id.

9. Id. First US Army Group was activated in the United Kingdom on 19 October 1944. 12th Army Group also was activated in England; it became operational in France on 1 August 1944, the same day as Third US Army. At that time General Omar N. Bradley became commander of 12th US Army Group with authority

over First US Army, commanded by General Courtney N. Hodges, and Third US Army, commanded by General George S. Patton. By January 1945, 12th Army Group consisted of the First, Third, and Ninth Armies, including 8 Corps, 23 Infantry Divisions, and 7 Armored Divisions. By VE Day, 8 May 1945, 12th Army Group also included Fifteenth Army. Report of the General Board, United States Forces, European Theater, Strategies of the Campaign in Western Europe, 1944-1945, (General Order 128 dated 17 Jun 1945) at Section 7 (retained by the Army Military History Institute)[Study No. 1] See also Russell F. Weigley, Eisenhower's Lieutenants (1981) for a thoroughly annotated description of the campaign and units, and L. Montross, War Through the Ages (3rd ed. 1960).

10. Id., at 1.

11. B. H. Liddell Hart, History of the Second World War (1970) at 558.

12. Id., at 677.

13. Interview with Colonel Charles E. Cheever, USA Ret., by Colonel Fred K. Green (1983) at 42 (transcript retained by the Army Military History Institute)[hereinafter cited as Cheever Interview].

14. Id., at 52.

15. Artical 8, Articles of War. A Manual for Courts-Martial (1928) was in effect during World War II.

16. Study 82, supra, at 40.

17. Id., at 5.

18. Id., at 10.

19. Third U.S. Army, After Action Report, Judge Advocate Section (undated) at 4 [hereinafter cited as Third Army Report].

20. Report of Operations (Final After Action Report) 12th Army Group, Judge Advocate Section (undated) at 25 [hereinafter cited as 12th Group Report].

21. Report of Operations Hq First U.S. Army for period 20 Oct 43 - 1 Aug 44, Judge Advocate Section (undated) at 227 [hereinafter cited as First Army Report].

22. Report of the General Board, United States Forces, European Theater, Military Justice Administration in the Theater of Operations at 1 (General Order 128, dated 17 Jun 1945)(retained by the Army Military History Institute)[hereinafter cited as Study 83]. By comparison, the

number of American soldiers serving in the Theater was about 4,182,000.

23. Id., at 3-23.

24. Id., at 50.

25. Id., at 5.

26. Study 82, supra, at 30.

27. Id., at 31.

28. Id.

29. Study 83, supra, at 4. See J. DiMona, Great Court-Martial Cases (1972) at 116-29. See generally 12th Group Report, supra, at 41 and Appendix I. See also TJAG Branch History Vol. II, supra, at 197.

30. First Army Report, supra, at 230.

31. Id., at 231.

32. Study 82, supra, at 33.

33. It should be noted that some protections were afforded convicted servicemembers by the Board of Review established in the European Theater to consider cases pursuant to Article of War 50 1/2. From 18 July 1942 through 15 February 1946, the Board reviewed 19,401 general courts-martial records involving 22,214 individuals. Including acquittals and cases disapproved by convening authorities, the sentences of death, dismissal, or dishonorable discharges were approved for only 16,987 individuals, or about 76.5 percent of those convicted. TJAG Branch History, Vol. I, supra, at 3. Of these, the Reviewing Authority suspended sentences for 11,813 and immediately restored 1109 to duty. Id. U.S. v. Woods, one of the cases considered by the Board of Review, illustrates the dichotomy between combat operations and the rights of an accused. Charged with misbehavior before the enemy on 5 October 1944, the charges were preferred on 11 October. A psychiatric exam was completed on 13 October, and a pretrial investigation was finished on 16 October. The case was referred on 17 October and tried that day. In a 50 minute trial the accused received a dishonorable discharge, total forfeitures, and 10 years confinement. The court consisted of two captains, one first lieutenant, and two second lieutenants. One of the latter was the law member. The evidence against the accused was a morning report and a stipulation that the accused's unit was before the enemy as a regimental reserve. The accused testified that he was not before the enemy. The Board of Review overturned the conviction on due process grounds: neither the accused nor

counsel had sufficient time to prepare for trial, and the defense counsel had improperly offered a stipulation in a capital case. Id. at 113-14. For a very interesting review of substantive problems considered by the Board of Review, see TJAG Branch History Vol. II, supra.

34. First Army Report, supra, at 227.

35. Study 82, supra, at 28-29.

36. Id., at 29.

37. Third Army Report, supra, at 8.

38. Final After-Action Report, Judge Advocate Section, Fifteenth US Army (15 Sep 45) at 9 (hereinafter cited as Fifteenth Army Report); First Army Report, supra, at 234.

39. Study 82, supra, at 29.

40. 12th Group Report, supra, at 26.

41. Study 83, supra, at 30.

42. 12th Group Report, supra, at 26.

43. Fifteenth Army Report, supra, at 6-7.

44. 12th Group Report, supra, at 40.

45. Study 83, supra, at 28.

46. Study 83, supra, at 28.

47. Interview with Major General Kenneth J. Hodson, USA Ret., by Lieutenant Colonel Robert C. Boyer (17 Mar 82) at 32 (retained in Army Military History Institute Library)[hereinafter cited as Hodson Interview]

48. Study 83, supra, at 28.

49. Report of the General Board, United States Forces European Theater, Military Offenders in the Theater of Operations (General Order 128, dated 17 Jun 45) at 17 (retained by the Army Military History Institute)[hereinafter cited as Study 84].

50. Id.

51. Id.

52. Id.

53. Id., at 18.

54. Id., at 19.
55. Id.; Study 83, supra, at 46.
56. Study 84, supra, at 22; 12th Group Report, supra, at 28, 127.
57. Id.
58. 12th Group Report, supra, at 30.
59. Id., at 147.
60. Id.; Study 83, supra, at 47.
61. Study 83, supra, at 47-48.
62. Id.; 12th Group Report, supra, at 149.
63. Id.
64. Study 83, supra, at 49.
65. 12th Group Report, supra, at 30.
66. Id.
67. Id.
68. Id.
69. Study 83, supra, at 47.
70. 12th Group Report, supra, at 29.
71. See Operational Law Deskbook, Judge Advocate & Military Operations Seminar (Dec 86)(retained at The Judge Advocate General's School, Charlottesville, VA).
72. TRADOC Pam 525-52, supra.
73. See Norman E. Tutrow, ed., War Crimes, War Criminals, and War Crimes Trials. An Annotated Bibliography and Source Book (1986).
74. 12th Group Report, supra, at 31; Fifteenth Army Report, supra, at 18-19.
75. Id.; Report of the General Board, United States Forces, European Theater, War Crimes and Punishment of War Criminals (General Order 128, 17 Jun 45) at 7 (retained by the Army Military History Institute)(hereinafter cited as Study 86).

76. US Army, Report of the Deputy Judge Advocate for War Crimes, European Command June 1944 to July 1948 at 3 (retained in the Army Library, Pentagon, Washington, D.C.) [hereinafter cited as DJA Report].

77. Id., at 160.

78. 12th Group Report, supra, at 32.

79. DJA Report, supra, at 3.

80. Id.

81. Id.

82. Id., at 17.

83. Id., at 14. Study 86, supra, at 7.

84. Id.; 12th Group Report, supra, at 157.

85. 12th Group Report, supra, at 173.

86. DJA Report, supra, at 15.

87. Id. The magnitude of the apprehension problem is reflected in the fact that at one time the list of subjects numbered over 150,000. Study 86, supra, at 89.

88. Id., at 16.

89. 12th Group Report, supra, at 33, 175.

90. DJA Report, supra, at 5. For example, ideally a war crimes investigating team included two lawyers, a pathologist, a forensic evidence expert, a recorder, a court reporter, a stenographer, a photographer, an interpreter, and two drivers. In the winter of 1944-45 there were but five pathologists in the theater, and there were an inadequate number of court reports to cover even courts-martial trials. Study 86, supra, at 8.

See also Fifteenth Army Report, supra, at 18-19.

91. Id., at 18.

92. Id., at 5, 6.

93. Id., at 5, 21.

94. Id., at 7, 10, 11.

95. Id., at 46, 52.

96. Id., at 46.
97. Id., at 165.
98. Id., at 79. See also Study 86, supra, at 17.
99. Id.
100. Id., at 80.
101. Id., at 79-80. The General Board reached this same conclusion. See Study 86, supra, at 11-12.
102. Id., at 81.
103. Study 86, supra, at 6. See also David Irving, The War Between the Generals (1981) at 214-17 and Robert J. Berens, "Battle Atrocities," Army (April 1986) at 43-56.
104. Id.
105. Report of the General Board, United States Forces, European Theater, Legal Phases of Civil Affairs and Military Government (General Order 128, 17 Jun 45) at 1 (retained by the Army Military History Institute Library)[hereinafter cited as Study 85].
106. Id.
107. Study 85, supra, at 2. See also Study 82, supra, at 14.
108. 12th Group Report, supra, at 31.
109. Fifteenth Army Report, supra, at 3.
110. Study 85, supra, at 4-5.
111. Id., at 4.
112. Id., at 5.
113. Id., at 7.
114. Id.
115. Id.
116. Id., at 9-10.
117. Id., at 12.
118. Id., at 17.

119. Id., at 18.
120. Id., at 19.
121. Id., at 19-22.
122. Id., at 23.
123. Id.
124. Id.
125. Id., at 24. See also Study 83, supra, at 13.
126. 12th Group Report, supra, at 31; Fifteenth Army Report, supra, at 12-14.
127. Study 85, supra, at 25. First Army Report, supra, at 238.
128. Id., at 25, 28.
129. Id.
130. Id.
131. Id.
132. Id., at 28-29. See also First Army Report, supra, at 238.
133. Id., at 30.
134. Id., at 32.
135. Id.
136. Id.
137. Id., at 45.
138. Id., at 49.
139. Id., at 46.
140. Id., at 47.
141. Id.
- 142 Third Army Report, supra, at 1, 7.
143. 12th Group Report, supra, at 29; Study 85, supra, at 39.



144. First Army Report, supra, at 30.
145. Study 85, supra, at 40.
146. Study 86, supra, at 14.
147. Id., at 14, 15.
148. See 12th Group Report, supra, at 48; First Army Report, supra, at 233; Third Army Report, supra, at 1; and 15th Army Report, supra, at 1. Of these, only Third Army had a legal assistance branch. None had a separate claims branch.
149. Study 87, supra, at 37; Fifteenth Army Report, supra, at 10.
150. 12th Group Report, supra, at 29, 133-44.
151. Id., at 28-29.
152. Study 87, supra, at 4.
153. Id., at 4.
154. Id., at 5.
155. Id., at 5-10.
156. Id., at 13.
157. Id.
158. Id.
159. Id.
160. Id., at 14.
161. Id., at 21.
162. Id., at 22.
163. Id., at 26.
164. Id., at 47.
165. Fifteenth Army Report, supra, at 10.
166. Study 87, supra, at 48, 50.
167. Id., at 48.
168. Id., at 49.

169. Daniel P. Bolger, "Operation Urgent Fury and Its Critics," Military Review (Jul 86) at 58.

170. Id., at 61-62.

171. Dan Cragg, "Operation 'Urgent Fury': The U.S. Army in Grenada," Army, Vol. 33 (Dec 83) at 29.

172. See Cragg and Bolger, supra.

173. Bolger, supra, at 58.

174. See e.g., William T. DeCamp, "Grenada: The Spirit and the Letter of the Law," Naval War College Review, Vol. 38 (May-Jun 85) at 28; and Thomas T. Romig, "The Legal Basis for United States Military Action in Grenada," The Army Lawyer (Apr 85).

175. Briefing Notes on Judge Advocate Activities During Urgent Fury (unpublished notes from the Office of the SJA, XVIII Airborne Corps)(hereinafter cited as Corps Briefing).

176. Id.

177. Memorandum for the SJA, XVIII Corps from Office of the SJA, HQ 82nd Airborne Division, subject: After Action Report - "Urgent Fury," (9 Nov 83)(hereinafter cited as SJA Memo).

178. Id.; Corps Briefing, supra.

179. Corps Briefing, supra; Interview with Lieutenant Colonel Richard H. Gasperini in Washington D.C. on 11 Feb 87.

180. Id.

181. Letter to SJA, XVIII Corps from SJA, 82nd Airborne Division, subject: After Action Report - Operation "URGENT FURY," (undated copy)(hereinafter cited as 82nd Report).

182. Id.

183. Gasperini Interview, supra.

184. SJA Memo, supra. The SJA was Lieutenant Colonel Quentin Richardson.

185. 82nd Report, supra.

186. SJA Memo, supra.

187. 82nd Report, supra.

188. SJA Memo, supra.

189. Corps Briefing, supra.
190. Gasperini Interview, supra.
191. Corps Briefing, supra. Lieutenant Colonel Norman Hamelin was the Judge Advocate; Major Ann Wright was the Civil Affairs Officer. See so Art House, "Grenada: Army Reserve Goes Into Action," Army Reserve Magazine, Vol. 30 (Spring 1984) at 19-22.
192. Id.
193. Id.
194. Id.
195. Id.
196. Id.
197. Id.
198. Id.
199. Id. The Judge Advocate providing assistance was Lieutenant Colonel John P. Weber, Chief, Administrative Law, XVIII Airborne Corps, who deployed to Grenada with the Corps advanced party on 29 October 1983. Id.
200. SJA Memo, supra.
201. Id.
202. Interview with Colonel Quentin Richardson in Washington D.C. on 3 December 1986. The primary reference he used as the SJA, 82nd Airborne Division, in Grenada was FM 27-10, The Law of Land Warfare. This was the only reference that could be easily carried for the anticipated air-drop.
203. Gasperini Interview, supra.
204. SJA Memo, supra.
205. Id.
206. 82nd Report, supra.
207. Richardson and Gasperini Interviews, supra.
208. SJA Memo, supra.
209. Gasperini Interview, supra.
210. SJA Memo, supra.

211. See Jeffrey L. Harris, "Grenada - A Claims Perspective," The Army Lawyer (Jan 86) at 7.

212. Letter to SJA, XVIII Corps, subject: Claims Operations in Grenada - After Action Report/Lessons Learned (9 Mar 84)[hereinafter cited as Corps Claims Report].

213. Harris, supra, at 7.

214. Id.

215. Id.

216. Corps Claims Report, supra.

217. Harris, supra, at 8; Memo for Record of U.S. Army Claims Service, subject: Claims Responsibility for Grenada Operations (After Action Report)(4 Apr 84).

218. Corps Claims Report, supra.

219. Id.

220. Id.

221. Id.

222. Id.

223. Corps Claims Report, supra.

224. See also Letter to Director, Training and Doctrine Division, U.S. Army Soldier Support Center from Chief, International Law Team, Office of The Judge Advocate General, Department of the Army (28 May 86)(responding to the Center for Army Lessons Learned issue, raised by the Grenada operation, intimating that there was a lack of knowledge of the law of land warfare, particularly as to the rules and procedures that apply to destruction, seizure, requisition, and disposition of property during combat operations).

225. Manual for Courts-Martial (1984) at I, para. 2.

226. House, supra, at 19 See generally Field Manual 41-10, Civil Affairs Operations (Dec. 1985).

227. See Manual for Courts-Martial (1984) at I, para. 2.

228. Interestingly, Judge Advocate historical material is widely scattered. For example, I found World War II after action reports and oral histories of senior judge advocates at the Army Military History Institute, Carlisle, PA. Other material, such as the Military Assistance Command Viet Nam

Command History and recent division histories, were at the Center for Military History, Washington, D.C. Still other material is at the Army Library, Washington, D.C., and the National Archives. The Judge Advocate General's School, Charlottesville, VA, has some but not all of the material used in this study project. See endnotes and bibliography.

229. See Manual for Courts-Martial (1984) at part V.

230. See AR 27-4, Legal Services, Judge Advocate General Service Organizations: Training, Employment, and Administration (1 Feb 81).

## BIBLIOGRAPHY

1. Berens, Robert J. COL. USA Ret. "Battle Atrocities." Army, April 1986.
2. Bolger, Daniel P., CPT. "Operation Urgent Fury and Its Critics." Military Review, July 1986.
3. Cheever, Charles E., COL., USA Ret. Past SJA, Third US Army. Oral History Interview by COL Fred Green, US Army Military History Institute, 1983.
4. Cragg, Dan, "Operation 'Urgent Fury': The U.S. Army in Grenada." Army, Vol. 33, No. 12, December 1983.
5. DeCamp, William T., "Grenada: The Spirit and the Letter of the Law." Naval War College Review, Vol. 38, May-Jun 1985.
6. DiMona, J., Great Courts-Martial Cases. Grosset & Dunlap, 1972.
7. Gasperini, Richard H., LTC. Past Deputy SJA, 82nd Airborne Division. Personal Interview. Washington D.C.: 11 February 1987.
8. Gates, LTC E. A. and Casida, MAJ G., Report of The Judge Advocate General by the Wartime Legislation Team. September 1983
9. Hart, B. H. Liddell, History of the Second World War. G. P. Putnam's Sons, 1982.
10. Harris, Jeffrey L., MAJ. "Grenada, - A Claims Perspective." The Army Lawyer, January 1986.
11. Hodson, Kenneth J., MG. Past The Judge Advocate General, U.S. Army. Oral History Interview by LTC Robert C. Boyer. US Army Military History Institute, 17 March 1982.
12. House, Art, MAJ., "Grenada: Army Reserve Goes Into Action." Army Reserve Magazine, Vol. 30, Spring 1984.
13. Irving, D., The War Between the Generals. Congdon & Lattes Inc., 1981.
14. Kutter, Wolf D., LTC., USA, "Operational Guidelines for US Peacekeeping Commanders." Thesis. Carlisle Barracks: US Army War College, 7 April 1986.
15. Montross, Lynn., War Through the Ages. Harper and Brothers, 1960.

16. Richardson, Quentin, COL. Past SJA, 82nd Airborne Division. Personal Interview. Washington, D.C.: 3 December 1986.

17. Patton, George S. Jr., General, USA. War As I Knew It. Houghton Mifflin Co., 1947.

18. Romig, Thomas T., MAJ. "The Legal Basis for United States Military Action in Grenada." The Army Lawyer, April 1985.

19. Tutrow, Norman E., War Crimes, War Criminals, and War Crimes Trials, An Annotated Bibliography and Source Book. Greenwood Press, 1986.

20. U.S. Army. Report of the Deputy Judge Advocate for War Crimes, European Command, June 1944 to July 1948. Undated.

21. U.S. Army, Training and Doctrine Command Pamphlet 525-52, Military Operations, US Army Operational Concept for Providing Legal Services in Theater of Operations. 21 March 1986.

22. U.S. Department of the Army. After Action Report [European Theater, World War II, Third U.S. Army, Judge Advocate Section]. Undated.

23. U.S. Department of the Army. Army Regulation 27-4, Legal Services, Judge Advocate General Service Organizations: Training, Employment, and Administration. 1 February 1981.

24. U.S. Department of the Army. Field Manual 41-10, Civil Affairs Operations. December 1985.

25. U.S. Department of the Army. Field Manual 100-16, Support Operations: Echelons Above Corps. April 1985.

26. U.S. Department of the Army. Final After-Action Report, Judge Advocate Section, Fifteenth US. Army. 15 September 1945.

27. U.S. Department of the Army. Headquarters, XVIII Airborne Corps and Fort Bragg. Briefing Notes on Judge Advocate Activities During Urgent Fury. Undated.

28. U.S. Department of the Army. History of the Branch Office of The Judge Advocate General with the United States Forces European Theater 18 July 1942 - 1 November 1945. 1 November 1945.

29. U.S. Department of the Army. Interim Historical Report, War Crimes Division, Judge Advocate Section, Korean Communications Zone. Extract cumulative to 30 June 1953.

30. U.S. Department of the Army. Letter to Director, Training and Doctrine Division, U.S. Army Soldier Support Center, from Chief, International Law Team, Office of The Judge Advocate General, pertaining to lessons learned in Grenada. 28 May 1986.

31. U.S. Department of the Army. Letter to SJA, XVIII Airborne Corps from SJA, 82nd Airborne Division, subject: After Action Report - Operation "URGENT FURY." Undated.

32. U.S. Department of the Army. Letter to SJA XVIII Airborne Corps, subject: Claims Operations in Granada - After Action Report/Lessons Learned. 9 March 1984.

33. U.S. Department of the Army. Memorandum for the SJA, XVIII Corps from Office of the SJA, HQ 82nd Airborne Division, subject: After Action Report - "Urgent Fury." 9 November 1983.

34. U.S. Department of the Army. Memorandum For Record of U.S. Army Claims Service, subject: Claims Responsibility for Grenada Operations (After Action Report). 4 April 1984.

35. U.S. Department of the Army. The Judge Advocate General's School, Operational Law Deskbook, Judge Advocate & Military Operations Seminar. December 1986.

36. U.S. Department of the Army. Prugh, George S., MG, USA. Vietnam Studies, Law at War: Vietnam 1964-1973, 1975.

37. U.S. Department of the Army. Report of Operations (Final After Action Report) 12th Army Group, Judge Advocate Section. Undated.

38. U.S. Department of the Army. Report of Operations HQ First U.S. Army for period 20 Oct 43 - 1 Aug 44, Judge Advocate Section. Undated.

39. U.S. Department of the Army. Report of the General Board, United States Forces, European Theater. Ordered by General Order 128, 17 June 1945. Includes the following individual studies:

Study 1. Strategy of the Campaign in Western Europe, 1944-1945.

Study 82. Judge Advocate Section in the Theater of Operations

Study 83. Military Justice Administration in the Theater of Operations.

Study 84. Military Offenders in the Theater of Operations.

Study 85. Legal Phases of Civil Affairs and Military Government.

Study 86. War Crimes and Punishment of War Criminals.



Study 87. Legal Questions Arising in the Theater of Operations.

- 40. U.S. Government. A Manual for Courts-Martial. 1928.
- 41. U.S. Government. Manual for Courts-Martial. 1984.
- 42. Weigley, Russell F., Eisenhower's Lieutenants. Indiana University Press, 1981.

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